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| 09/374,598      | 08/13/1999  | JAN HENDRIK MENSEN   | 044696-5007         | 3958             |

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EXAMINER

TRAN, HANH VAN

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 21

Application Number: 09/374,598

Filing Date: August 13, 1999

Appellant(s): MENSEN, JAN HENDRIK

**MAILED**

JUN 17 2003

**GROUP 3600**

Mr. Richard S. Meyer  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 24, 2003.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 17-45 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) ClaimsAppealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 17-45 are rejected under 35 U.S.C. 251. This rejection is set forth in prior Office Action, Paper No. 18.

**(11) Response to Argument**

Appellant's argument regarding the Recapture Rule have been considered but disagreed with by the examiner. As pointed out at the interview on February 26, 2003, the PTO policy for handling Recapture in Reissue applications is very clear. If a Reasons for Allowance is done in a patented filed and applicant does not present a counter statement or comment as to the reasons for allowance and permitted the claims to issue, any limitations recited in the Reasons for Allowance are considered the reason that the patent claims were allowable over the prior art of record, and thus applicant is considered to have surrendered subject matter not containing said limitations.

Therefor, since the Reasons for Allowance from the patented application stated that the patented claims must have one of two features as specified in the above rejection, and the applicant has no counter statement or comment directed to the specifics of the two features required for patentability these Reissue claims are rejected under the Recapture Rule. Since this is office policy the rejection is maintained.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

HVT *HVT*  
June 13, 2003

Conferees  
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